

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 15 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

RECEIVED
Town of Durham

JUL 29 2013

Appeal for Applicant

State of New Hampshire

Strafford, ~~Planning, Assessing,~~
Zoning & Code Enforcement

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: Golden Goose Capital, LLC

\$ 341 pd. Fee
Check #

Address: 1 Pleasant Street, Unit 1A-21, Westford, MA 01886 Phone # 603-834-1653

Owner of Property Concerned: Same (21 Madbury Rd); AND ALSO Rose Lawn Properties, LLC (17 Madbury Rd)
(If same as above, write "Same")

Address: Same; AND ALSO 116 King Road, Bedford, NH 03110
(If same as above, write "Same")

Location of Property: 17 and 21 Madbury Road, Durham, NH
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information)

Combined site is 2.602 acres, located at Tax Map 2, Lots 12-3 and 12-4. The site has approximately 190' of frontage along Madbury Rd on its easterly boundary. The site has an equivalent length of frontage along Pettee Brook on its westerly boundary. Subject site is located in the Central Business District. The site is currently improved with various student housing units, all of which are in substantial disrepair. See "Existing Conditions Plan" dated 7/25/13 prepared by MJS Engineering, PC (Exhibit 1).

Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: _____
Number _____ Date _____

Article _____ Section _____ of the Zoning Ordinance in question.

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____

SECTION 3: APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: _____

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

1. No decrease in value of surrounding properties would be suffered;
2. Granting the variance would not be contrary to the public interest;
3. Denial of the variance would result in unnecessary hardship to the owner seeking it;
4. By granting the variance substantial justice would be done;
5. The use must not be contrary to the spirit and intent of the ordinance.

A Variance is requested from Article _____ Section _____ of the Zoning Ordinance to permit _____

See attached pages for a description of each of five (5) variances requested (A - E). _____

Facts supporting this request:

1. No decrease in value of surrounding properties would be suffered because:

2. Granting the variance would not be contrary to the public interest because:

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

and

b. the proposed use is a reasonable one because:

Or

3(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

4. By granting the variance substantial justice would be done because:

5. The use will not be contrary to the spirit and intent of the ordinance because:

A. Variance from Wetlands Conservation Overlay District (WCO); Article 175-59.A.2.d

A variance is requested from Article 175, Section 59.A.2.d of the Zoning Ordinance to permit the erection of structures within the 75' wetlands setback. The proposed improvements within the setback include commercial and residential buildings, as well as an enhanced waterway frontage offering an "outdoor riverwalk atmosphere". Redevelopment of the existing condition will yield a greater wetlands setback and bring the property closer towards conformity. See "Proposed Site Plan Option" dated July 10, 2013 prepared by TMS architects (Exhibit 2).

1. No decrease in value of surrounding properties would be suffered because: Redevelopment of the subject site is long overdue. The existing uses consist of dilapidated student housing and an expansive impervious parking area causing 21,255 SF of existing impervious cover within the wetland buffer. Exhibit 1. Redevelopment will result in new commercial and residential uses. Exhibit 2.
2. Granting the variance would not be contrary to the public interest because: The wetlands setback will be enhanced beyond the existing impervious coverage condition. See Photographs of Existing Waterway Buffer (Exhibit 3). Redevelopment would provide an opportunity to construct a "rain garden" and other surface water infiltration features.
3. A (a) No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: Redevelopment will bring the property closer towards conformity by reducing impervious coverage in the buffer, while offering enhanced protection for Pettee Brook. The project will require an Alteration of Terrain permit from NHDES pursuant to RSA 485-A:17, which regulates stormwater management and is intended to protect the adjacent wetland from unmanaged deterioration.

(b) The proposed use is a reasonable use because: The recent redevelopment on the adjacent parcel, across the brook, received similar relief from the WCO buffer and setback requirements. See Photographs of Adjacent Redevelopment (Exhibit 4). Respecting the full setback on the subject site would unreasonably impinge on the available developable area and impair the feasibility of the redevelopment proposal.

OR

- B. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: Expanding the existing wetland setback will better protect the waterway and brook channel. Without redevelopment, the waterway frontage and the wetland will continue to deteriorate and erode, while having a negative influence on the overall feasibility of the redevelopment effort and Durham's economic revitalization generally. Redeveloped, the waterway can become an aesthetically-pleasing asset to both the redevelopment proposal, the longevity of the brook channel and the public's enjoyment of the waterway corridor. The construction of a "rain garden" feature will assist with stormwater treatment and infiltration pursuant to RSA 485-A:17.
4. By granting the variance substantial justice would be done because: The property will be brought closer toward conformity with an enhanced wetland setback and stormwater management.
 5. The use will not be contrary to the spirit and intent of the ordinance because: The purposes of the WCO are served by bringing the property closer towards conformity while better protecting the waterway corridor.

B. Variance from Shoreland Protection Overlay District; Article 175-74.A.3

A variance is requested from Article 175, Section 74.A.3 of the Zoning Ordinance to permit modification of existing impervious structures within 25 feet of Pettee Brook. The proposed impervious structures do not include buildings. Instead, the proposed impervious structures are limited to patios and pathways to connect newly designed bridges with the upland improvements, commercial leasable space and residential buildings. The applicant is proposing redevelopment of the existing improvements such that an "outdoor riverwalk atmosphere" is achieved. Exhibit 2. Redevelopment of the existing condition will yield a greater setback and bring the property closer towards conformity.

1. No decrease in value of surrounding properties would be suffered because: Redevelopment of the subject site is long overdue. The existing uses consist of dilapidated student housing and an expansive impervious parking area, causing 1,037 SF of impervious coverage within the shoreland buffer. Exhibit 1. Redevelopment of the waterway frontage will result in an enhanced buffer area with a walkable brookscape supporting new commercial and residential uses. Exhibit 2.
2. Granting the variance would not be contrary to the public interest because: The subject waterway frontage is underdeveloped, underutilized, neglected and overgrown. Sidewalks are as close as 9.4' from the edge of the waterway. Exhibit 3. Redevelopment would provide greater enjoyment of the brook for future residents and the public, while contributing a walkable and enjoyable space towards Durham's economic revitalization goals.
3. A (a) No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: Redevelopment will bring the property closer towards conformity while protecting the waterway frontage from further neglect, erosion, and deterioration.

(b) The proposed use is a reasonable use because: The recent redevelopment on the adjacent parcel, across the brook, offers the opportunity to enhance and protect both sides of waterway corridor, ending a long period of neglect and bank erosion. Exhibit 4.

OR

- B. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: The site's waterway frontage is an underdeveloped resource that presently detracts from the site, but could enhance and assist redevelopment. Left untouched, the waterway frontage will continue to deteriorate and erode, while having a negative influence on the overall redevelopment effort. Exhibit 3. Enhanced, however, the waterway can become an aesthetically-pleasing asset to both the redevelopment proposal, the longevity of the waterway corridor and the public's enjoyment of the waterway. Exhibit 2.
4. By granting the variance substantial justice would be done because: The property will be brought closer toward conformity with the shoreland setback.
 5. The use will not be contrary to the spirit and intent of the ordinance because: The purposes of the Shoreland Protection Overlay District are served by bringing the property closer towards conformity and better protecting the waterbody channel.

C. Variance from Use Standards; Article 175-53.A.VII

A variance is requested from Article 175, Section 53.A.VII of the Zoning Ordinance to permit mixed use development with residential units on the first floor. The redevelopment proposal offers first-floor commercial space in approximately half of the proposed first-floor square footage. Exhibit 2.

1. No decrease in value of surrounding properties would be suffered because: Redevelopment of the subject site is long overdue. Exhibit 3. The existing uses consist of dilapidated student housing and an expansive impervious parking area. Exhibit 1. Redevelopment offers a mixture of commercial and retail leasable space, along with newly constructed residential units. Exhibit 2.
2. Granting the variance would not be contrary to the public interest because: Mixed use development is permitted in the CB district. Offering commercial and retail leasable space in some, but not all, first-floor space is consistent with the Ordinance but does not unduly burden the feasibility of the redevelopment.
3. A (a) No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: Redevelopment will bring the property closer towards conformity in many ways, including less overall impervious coverage within the wetland and shoreland buffers. Applicants do not believe that there exists sufficient commercial demand to fill all first-floor space with commercial tenants. Thus, strict adherence to the Ordinance jeopardizes the feasibility of a long overdue redevelopment. Instead, a variance offers the applicant the flexibility to react to the marketplace and to offer additional commercial opportunities as Durham's economic revitalization goals progress.

(b) The proposed use is a reasonable use because: Requiring all first-floor space to be filled with commercial tenants jeopardizes the feasibility of the redevelopment proposal.

OR

B. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: The size of the site creates the effect of two distinct areas of frontage: Madbury Road and the Pettee Brook. Exhibit 1. While commercial users are likely to be interested in both the areas of redeveloped roadway and waterway frontage, forcing first-floor commercial users into the interior areas will likely to cause prolonged vacancies. Exhibit 2.

4. By granting the variance substantial justice would be done because: The variance allows the redevelopment proposal a better likelihood of success, while maintaining the flexibility to add the additional nonresidential space that Durham's economic revitalization efforts might produce.
5. The use will not be contrary to the spirit and intent of the ordinance because: The Ordinance recognizes the importance of "enhancing the achievement of the town's economic development goals", including the successful redevelopment of underperforming properties. See Ordinance at §175-3 and §175-41.A.

D. Variance from Development Standards in the Central Business District; Article 175-41.F.2

A variance is requested from Article 175, Section 41.F.2 of the Zoning Ordinance to permit a portion of the front wall of the principal buildings will be setback up to 24' from Madbury Road. The maximum allowed setback to principal buildings in the CB district is 15'. The "outside edges" of the principal buildings will conform to the 15' setback, while "inward edges" of the principal buildings will "flair inward" to a setback of up to 24'. Exhibit 2. By having the buildings "flair inward", a pedestrian-friendly recess and walkable promenade is achieved.

1. No decrease in value of surrounding properties would be suffered because: Redevelopment of the subject site is long overdue. The existing uses consist of dilapidated student housing and an expansive impervious parking area. Exhibit 1. Redevelopment offers a mixture of commercial and retail leasable space, along with newly constructed residential units.
 2. Granting the variance would not be contrary to the public interest because: Mixed use development is permitted in the CB district. A walkable pedestrian promenade enhances the streetscape appeal of the project.
 3. A (a) No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: Redevelopment will bring the property closer towards conformity in many ways, including less overall impervious coverage within the wetland and shoreland buffers. Causing the principal building to front square to Madbury Road will detract from the aesthetics of the project "entrance" while serving no greater purpose.

(b) The proposed use is a reasonable use because: Enhancing the walkability and aesthetics of the sidewalk and streetscape will encourage the feasibility and walkability of the redevelopment proposal.
- OR
- B. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: The unique length of the site's roadway frontage would cause the buildings to create an otherwise stark – and less inviting – barrier to walkability and driveway access.- 4. By granting the variance substantial justice would be done because: The variance will allow the redevelopment proposal to better conform with the "Pedestrian Area" requirements of Article 175, Section 41.F.3. The project can "be improved with appropriate amenities to link the building with the sidewalk and encourage pedestrian and/or customer use of th[e] space."
- 5. The use will not be contrary to the spirit and intent of the ordinance because: The Ordinance recognizes the importance of "enhancing the achievement of the town's economic development goals", including the successful redevelopment of underperforming properties. See Ordinance at §175-3 and §175-41.A.

E. Variance from Development Standards in the Central Business District; Article 175-41.F.7

A variance is requested from Article 175, Section 41.F.7 of the Zoning Ordinance to permit development of five (5) floor buildings wherein some buildings will contain one (1) floor of non-residential units and other buildings, regardless of the number of floors, will contain all residential floors. Exhibit 2.

1. No decrease in value of surrounding properties would be suffered because: Redevelopment will reflect a marked improvement over the existing conditions, as redevelopment of the subject site is long overdue. The existing uses consist of dilapidated student housing and an expansive impervious parking area. Exhibit 1. Redevelopment offers a mixture of commercial and retail leasable space, along with newly constructed residential units.
2. Granting the variance would not be contrary to the public interest because: Mixed use development is permitted in the CB district.
3. A (a) No fair and substantial relationship exists between the general purpose of the ordinance provision and the specific application of that provision to the property because: Redevelopment will bring the property closer towards conformity in many ways, including less overall impervious coverage within the wetland and shoreland buffers.

(b) The proposed use is a reasonable use because: The subject site is one of the largest available redevelopment sites in downtown Durham. Expecting nonresidential users within all first floors and some second floors threatens the economic feasibility of the redevelopment proposal. Instead, allowing an additional residential floor, and the additional residential units, will help support redevelopment while preserving the flexibility to bring in additional commercial tenants as Durham's economic revitalization takes hold.

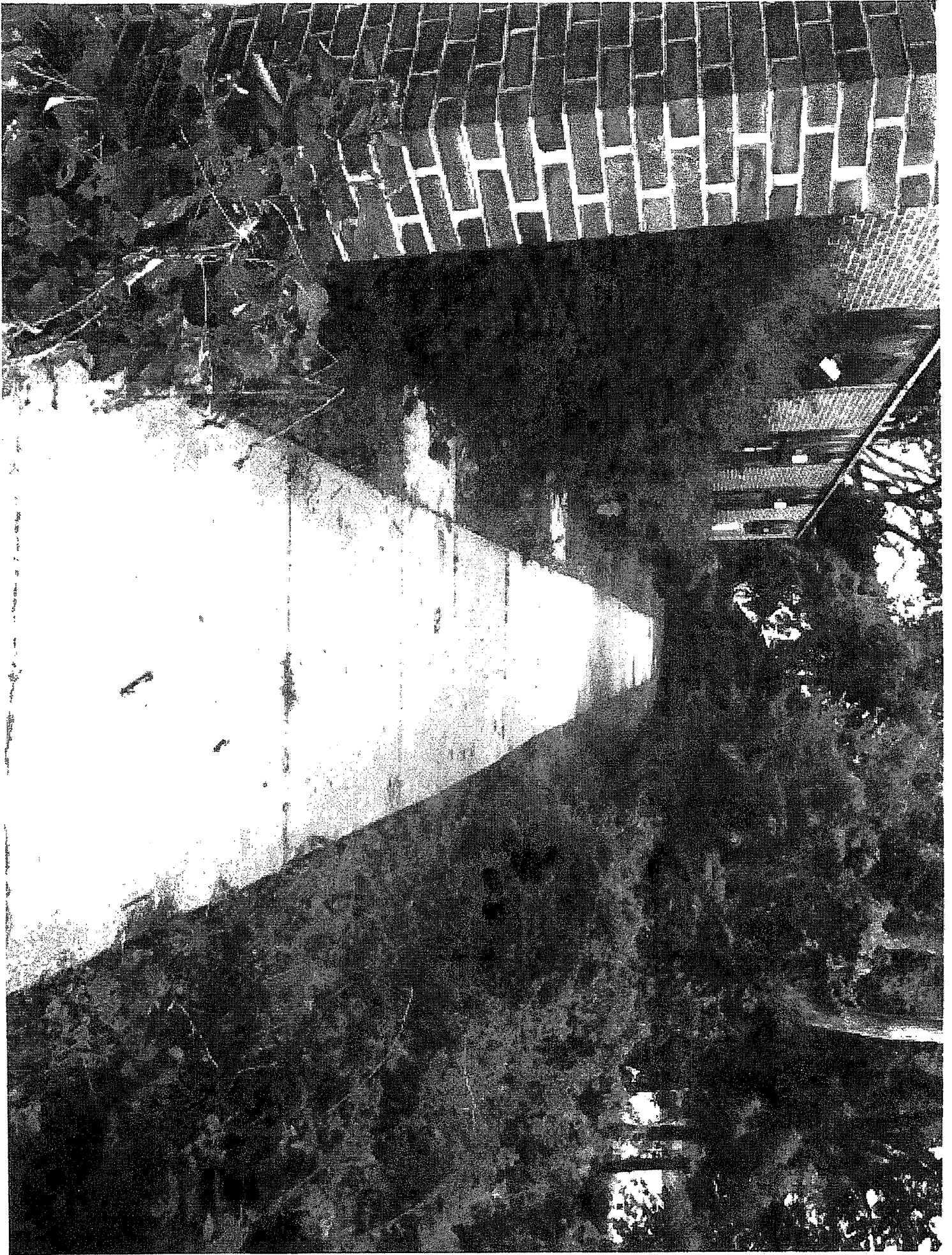
OR

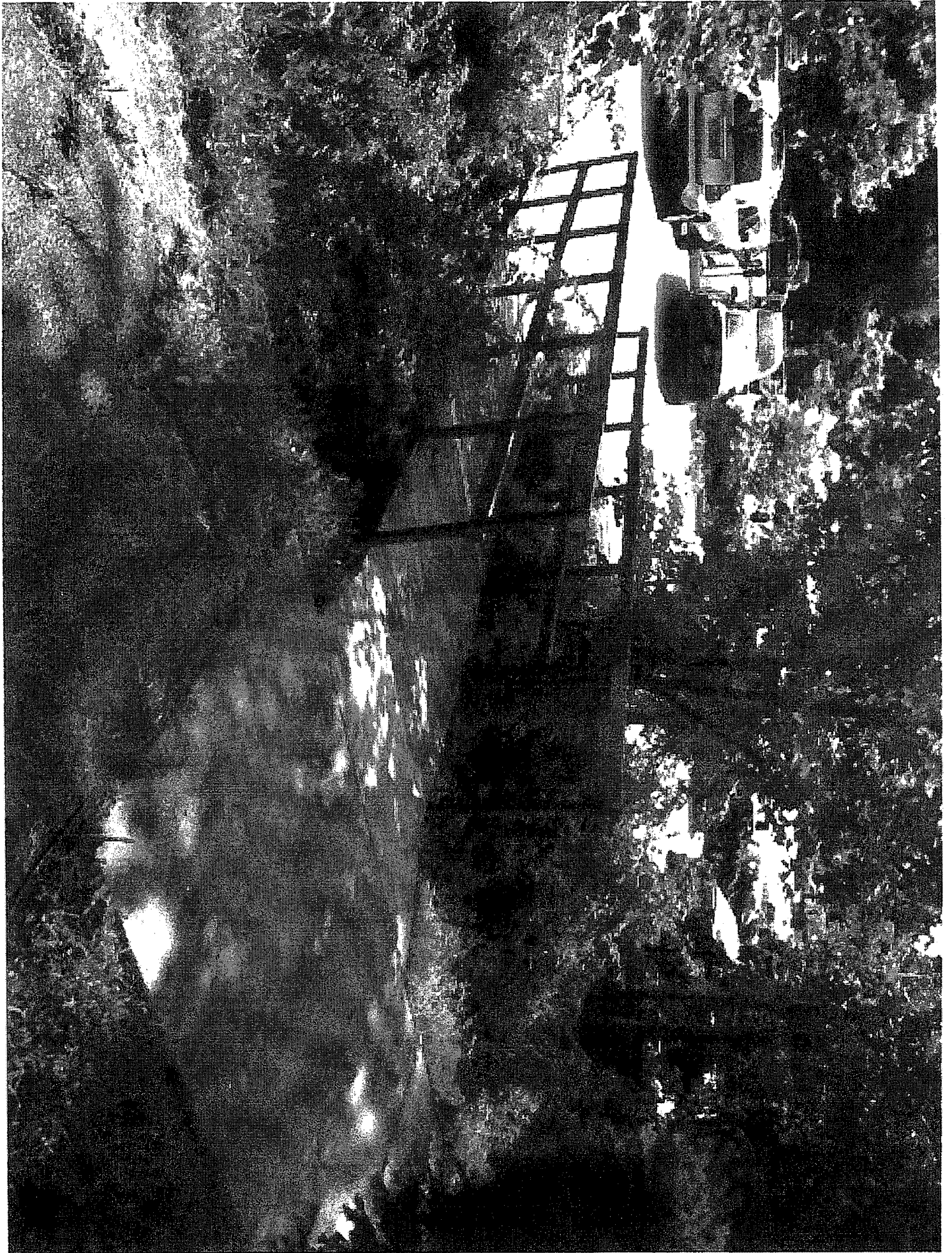
- B. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: The subject site is one of the largest available redevelopment sites in downtown Durham. Expecting nonresidential users within all first floors and some second floors threatens the economic feasibility of the redevelopment proposal.
4. By granting the variance substantial justice would be done because: The site is currently improved with varied student housing units, all of which are in substantial disrepair. Exhibits 1 and 3. The current configuration of improvements is entirely residential. Even with the requested variances, substantial commercial leasable space will be provided for restaurants, shops and other businesses permitted in the CB district. Exhibit 2. In this regard, granting the variance allows the property to be brought substantially closer towards conformity.
5. The use will not be contrary to the spirit and intent of the ordinance because: The Ordinance recognizes the importance of "enhancing the achievement of the town's economic development goals", including the successful redevelopment of underperforming properties. See Ordinance at §175-3 and §175-41.A.

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3





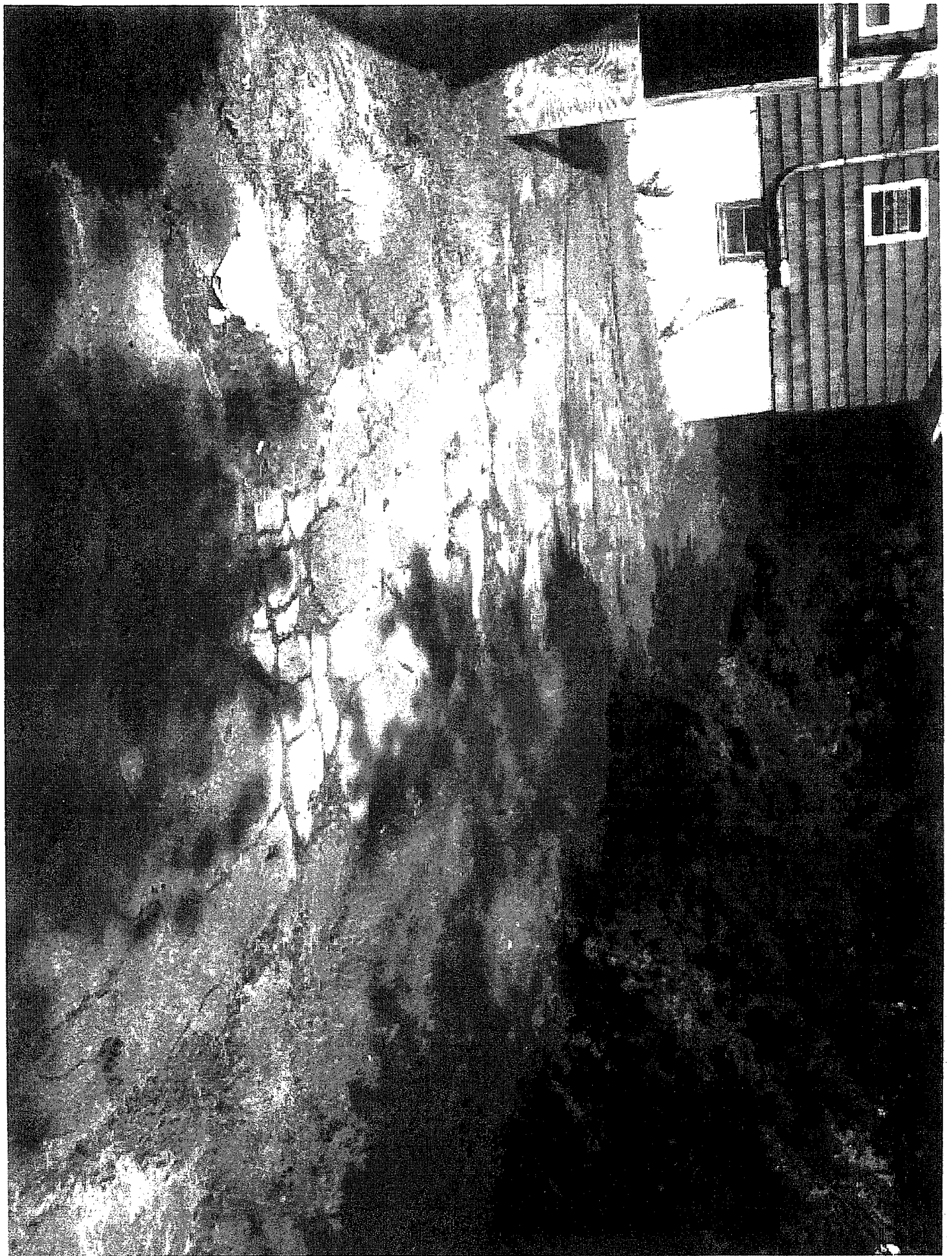


EXHIBIT 4



